IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4166 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 NO

SAPAN BABULAL CHAKRAVARTI

Versus

NIRMALSINGH DHARAMSINGH SAINI

Appearance:

1. Special Civil Application No. 4166 of 2001

MR JIGAR P RAVAL for Petitioner No. 1

MR PF ADHVARYU for Respondent No. 1

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 09/05/2002

ORAL JUDGEMENT

1. The petitioner-workman has, under Articles 226 and 227 of the Constitution, challenged the award of the Labour Court, Vadodara in Reference No.38 of 1992,

whereby, the reference was rejected by order dated 16.7.1999. Evidently, the party to the dispute, joined as the employer, is Nirmal Hotel with the address being C/o Shri Nirmalsingh Dharamsingh Saini.

2. It appears from the impugned award and the material on record placed for perusal of this Court that in case of the termination in the year 1991, the dispute of which was referred in 1992 wherein the petitioner was examined in the year 1994 and, till the award made in the year 1999, the respondent had not led any evidence whatsoever. Not only that, the respondent, though appeared before the Labour Court, did not choose to even cross-examine the petitioner. Therefore, there was no alternative for the Labour Court but to accept the version given on oath by the petitioner. However, the Labour Court has, in the impugned award, delving into the documentary evidence produced by the petitioner only to find out that the owner of the hotel against which the reference was made was different from the person who was alleged to be the owner by the petitioner. On that basis, it was concluded that there was no relationship between the petitioner and the respondent and, therefore, the reference was rejected.

3. The impugned award is, ex-facie, perverse and illegal, particularly in view of the fact that the Labour Court was not at all concerned with the issue as to who was the owner of the hotel against whom the dispute was referred. Therefore, the Labour Court is held to have completely misdirected itself in appreciating the evidence and the award being illegal and perverse has to be set aside. In the matter of moulding the relief, the learned counsel Mr.Adhvaryu for the respondent submitted that this Court exercising its powers under Articles 226 and 227 of the Constitution should only remand the matter back to the Labour Court for reappreciation of the evidence. He even offered to lead necessary evidence if the matter was remanded to the Labour Court. The latter part of the request is practically seeking a relief in the petition of the petitioner. The learned counsel for the respondent relied upon the judgment of the Andhra Pradesh High Court in THE DEPOT MANAGER, APSRTC, CUDDAPAH v. P. GANGARAJULU reported in 1995 (8) SLR 411 and the judgment of the Punjab & Haryana High Court in PUNJAB COOPERATIVE MILK PRODUCERS FEDERATION LTD., CHANDIGARH v. THE PRESIDING OFFICER reported in 1999 (2) SLR 750.

4. It is obvious from the record and submissions of the learned counsel that, in the facts of the present case, the only and the entire evidence which can be

appreciated or reappreciated upon remand is the evidence of the petitioner. With greatest respect to the ratio of the judgments mentioned hereinabove, in the facts of the present case, it would be a pointless prolongation of the litigation if an order of remand have to be made without any substantive relief to the petitioner after eleven years of illegal termination of his service. Even, as far as backwages are concerned, the learned counsel for the petitioner fairly conceded on the basis of the candid statement made by the petitioner before the Labour Court itself that he was in receipt of some income by way of alternative employment. It was again left to this Court to fix proper percentage of backwages to meet the ends of justice.

5. Accordingly, the petition is allowed and Rule is made absolute with the direction to the respondent to reinstate the petitioner on his original post with 50% backwages within two months of receipt of a copy of this order. The respondent shall also pay Rs.1,500/- by way of costs to the petitioner.

Sd/-

(D.H.Waghela, J.)

09.5.2002

(KMG Thilake)